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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,172	03/11/2004	Bernd Aumann	ZAHFRI P604US	7581
20210	7590	02/16/2006	EXAMINER	
DAVIS & BUJOLD, P.L.L.C. FOURTH FLOOR 500 N. COMMERCIAL STREET MANCHESTER, NH 03101-1151			LE, DAVID D	
			ART UNIT	PAPER NUMBER
			3681	

DATE MAILED: 02/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/798,172	Applicant(s) AUMANN, BERND	
	Examiner David D. Le	Art Unit 3681	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☒ Applicant's reply has overcome the following rejection(s): 35 U.S.C. 112, Second Paragraph.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 17-24, as per paragraph 6 of the Final rejection.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
 13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because:

First, applicant argues that the claimed invention, as recited in claim 17, includes the following feature(s): "if the engine output is at its maximum output, the control system divides the torque converter output between the auxiliary drive and the propulsion system so as to supply the required power to the auxiliary drive and the working hydraulic system and reduces, as necessary, the power supplied to the propulsion system so as to control the speed of the vehicle to a desired speed dictated by the pedal position." Examiner respectfully disagrees because the present claim 17 does not accurately reflect the above argument. Claim 17 specifically states, "when the drive engine is operating at maximum power, the clutch is engaged and the selector lever is then actuated, the clutch is actuated in a disengaging direction and the drive engine is regulated so that the auxiliary drive reaches a defined speed and a driving speed of the propulsion drive is reduced as the driving resistance increases." Claim 17 does not specifically require the speed of the vehicle to be dictated by the pedal position when the engine is operating at maximum power, as stated above.

Second, applicant argues that Evans'520 drive train does not include any form of auxiliary drive for driving any form of working hydraulic system. As a result, the drive train taught by Evans'520 does not and cannot apportion the engine power output between a drive transmission, for moving the vehicle over a surface, and any type of an auxiliary drive for controlling operation of any form of a working hydraulic system. Examiner respectfully disagrees with the above argument because Evans'520 (column 7, lines 13-17) discloses a hydraulic implement and states, "the present invention provides for a ground speed control of a machine while the engine is running at high idle. This allows the operator to inch the machine while providing full power to the implement hydraulics". Examiner also referenced this hydraulic implement on page 3 of the final Office action when referring to the claimed auxiliary drive.

Accordingly, the combination of Evans'520 in view of Nakagami et al. '248, as set forth in the final Office action, dated 01/09/06, meets the claimed limitations.

Handwritten mark

Charles A. Marmor 2/14/06
CHARLES A. MARMOR
SUPERVISORY PATENT EXAMINER
ART UNIT 3681